Exhibit 2

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIA HENRY, et al.,	)	Docket No. 22 C 125
Plaintiffs,	)	
vs.	)	
BROWN UNIVERSITY, et al.,	)	Chicago, Illinois
	)	February 8, 2023
Defendants.	)	9:15 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MATTHEW F. KENNELLY

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(The following proceedings were had by video:)

THE CLERK: Case 22 C 125, Henry v. Brown University.

THE COURT: So I know we got, you know, a lot of people on, most by phone. I'm going to suggest we do this the way we've done all of them, which is that anybody who wants to give your name for the record, please do so. But anybody who's on by phone only, you need to mute your phone right now. If I have to mute you more than once, I'm going to cut you off.

Okay. So go ahead in terms of people who are on video that want to give your names.

MR. GILBERT: This is Robert D. Gilbert from Gilbert Litigators and counselors on behalf of the plaintiffs.

MR. NORMAND: It's Ted Normand from Freeland Norman Freeland for the plaintiffs as well, your Honor.

MS. MILLER: Your Honor, this is Britt Miller from Mayer Brown on behalf of Georgetown. We previously sent to your clerk and to the court reporter a list of all of the defense counsel who would be appearing on the record today so we didn't have to do this. If your Honor would like us to formally appear, we can, but we sent that list.

THE COURT: That's great. That covers it. I appreciate you doing that.

Okay. So I'm going to dispense with asking anybody else for your names at this point. But all I'll ask is that

when you talk, just say who you are so the court reporter can get it down.

We have an awful lot to cover and not an eternity to cover it.

So I'll tell you where I actually want to start is with I think the last set of things that were filed, and that is the motion by some defendants for entry of an order regarding the HEA statute and production of certain FAFSA information. So for the benefit of the court reporter, FAFSA is F-A-F-S-A, all capitals.

I got something on Monday from Cornell, and I'm hoping the lawyer from Cornell is on here because I don't understand what you're asking me to do or telling me to do. You kind of state a position here, but you don't really tell me what you think I should do. So tell me.

MR. FARDON: Your Honor, good morning. Zach Fardon for Cornell. Your Honor, the reason we filed the position paper is we do differ from the other defendants only in this narrow regard. They're asking the Court to enter a finding that collection of production and use of FAFSA data in this litigation is part of administration of -- as that term is used in the HEA. And Cornell's concern is there's no case law that says that.

And unlike the other universities, Cornell does not believe that such a permissive interpretation of the HEA is

necessarily consistent with the limited existing education department guidance on the issue or the -- yes, sir.

THE COURT: So you're just repeating what I already read. Did you remember my question, Mr. Fardon? So let's answer that in the next words that come out of your mouth.

MR. FARDON: Your Honor, we had submitted an inquiry to the education department where custodians of that data --

THE COURT: Stop. What are you asking me to do? I mean, you came out and stated your position. I get that. I understand your position. What are you asking me to do? Are you asking me to enter -- to not enter an order, to enter some order different from one that's provided or what?

MR. FARDON: Your Honor, we would like either guidance from the education department or suggest the Court seek guidance from the education department as to what their position is.

THE COURT: So I'm supposed to ask the education department what I should do? That's your position? That's what you just said.

MR. FARDON: Your Honor, we have submitted an inquiry, and we wanted the comfort of knowing what the education department's position is on this.

THE COURT: So your position right now is that it's not covered, right, that you can't turn this stuff over? That's got to be your position, otherwise, you wouldn't be

asking for guidance.

MR. FARDON: That's right, your Honor.

THE COURT: Okay. So stop. This case was filed in, when, January a year ago, so it's about 13 months old. And I went through all of these motions to dismiss. You know, extensive briefing was filed, and the -- you know, because it's absolutely 100 percent without question crystal clear that in order to litigate the case, disclosure of this information is needed because it goes to the core of what's alleged.

That if your position was what you just said it is, I should have gotten a motion to dismiss like eight months ago saying, you got to dismiss the case, Judge, because the plaintiffs aren't going to be able to get the information because it's illegal. I never got that motion. So why shouldn't I just consider you to have forfeited your position?

MR. FARDON: Judge, we're only talking about FAFSA information here, this limited set of data. We're not objecting to production of relevant financial --

THE COURT: So you guys have asked for FAFSA information from the plaintiffs, haven't you?

MR. FARDON: I'm not aware, your Honor. Perhaps someone else --

THE COURT: That's half of the briefing on the stuff I got to deal with today is you wanting the plaintiffs to

provide the FAFSA forms and all the information that underlies them that they submitted during whatever years in question. Am I wrong about that?

MR. FARDON: I do not believe you're wrong, your Honor.

THE COURT: Okay. So what is -- the prohibition doesn't apply when it's going the other way?

MR. FARDON: It's not that, your Honor. It's that we can find no precedent, and we are contractual in private -- to oversee obligations as custodians of this data to the education department, and we just wanted to raise this position with the Court.

THE COURT: Thanks.

Is there anybody on the defense side that agrees with Cornell's position on this? If so, you need to tell me right now, whether you're on video or not.

MR. RUBIN: Your Honor, this is Michael Rubin from Arnold Porter for University of Chicago, and I am here to speak on behalf of the other defendants. And all the other defendants joined in the motion to have the FAFSA order entered. That's an answer to your question.

THE COURT: Actually, it's not even close to an answer to my question. My question was real simple. Does anybody agree with Cornell's position that this material can't be turned over? So that's a question that can be answered yes

or no and so --

MR. RUBIN: No, your Honor.

THE COURT: Okay. So no other defendant agrees with that.

All right. So, basically, Cornell's position is that I should just put the brakes on the litigation and just sit back and wait for a federal bureaucracy to respond to an inquiry that's been made.

When did you make the inquiry?

MR. FARDON: January 17th, your Honor.

THE COURT: Why did you wait so gosh darn long?

MR. FARDON: Your Honor, once we identified this specific concern and couldn't find any precedent for the concern, we submitted the inquiry.

THE COURT: When did you get the request that this -- that would have called for this information? When was that served?

MR. FARDON: I don't have that date handy, your Honor. I apologize.

THE COURT: Somebody? Ballpark.

MR. GILBERT: September 19th, your Honor. This is Robert Gilbert speaking. September 19th, your Honor.

THE COURT: That would be four months before, Mr. Fardon, you guys made the request to the education department. I mean, seriously, with a straight face, you are

telling me that I should wait on this. Well, my view is the position has been forfeited twice. It's been forfeited once because the upshot of this position is that the litigation can't proceed because it's been clear from day one that this type of information is needed in order to pursue the litigation. So it should have been raised as part of a motion to dismiss.

Secondly, you forfeited it by waiting four months after you got the request to even ask the education department, not even ask me. You waited three more weeks to do that.

So the only other question I have about this one then is that in the last document that I got, which was from the plaintiffs, there was a proposed tweak, I guess is what I would call it, of the draft order. And I have the -- I don't want to share it because that's just going to be too cumbersome. I've got the plaintiffs' proposed version of this up on my screen now.

And so my question on the -- to whoever is the spokesperson for the defense, which seems like it's Mr. Rubin on this, at least, is do you have any problem with the proposed tweaks by the plaintiff? And, if so, tell me what I should untweak and where because I didn't get a redlined version of it.

MR. RUBIN: Yes, we do have a problem, your Honor.

We submitted this order for the narrow purpose of getting this data to the plaintiffs and getting it produced. The plaintiffs want to address before they've ever seen the data and ask the Court to hold before ever seeing the data whether the file that we produce the data in to be produced as confidential versus highly confidential -- outside eyes only, attorneys' eyes only.

THE COURT: Stop right there. Stop right there. I don't need to decide that right now. So if that's what the plaintiff is asking me to do, I don't need to do that. So do I have a draft order somewhere from the defendants on this? If you can just tell me when it got sent, because, honestly, my proposed order in-box is kind of full of orders for this case.

MR. RUBIN: Yes, it was sent at, I believe it was, on Friday, this past Friday, the 3rd.

THE COURT: February 3rd. Okay. All right.

MR. RUBIN: Actually, it was technically the 4th, around 2:00 a.m.

THE COURT: Okay. That will be easy to find. All right. Thanks. All right. That's done on that.

Okay. What I want to do next -- I guess I'm going to kind of try to go back and go through this more or less sequentially. On most of these -- on some of these, I don't even have any questions. I'm just going to tell you what the

rulings are. That's going to be the case on the one where there's a whole laundry list of stuff. On some of them, I have a question or two. And on maybe one or two, I'm going to need to hear a little bit more argument.

So the first one I've got is the dispute about numbers of depositions and lengths. And so what this boils down to, as I understand it, is a dispute over whether the plaintiff gets to do only one or more than one 30(b)(6) deposition of each defendant.

So to me, the way I read the defendant's position, it kind of seems to assume that there is some sort of a rule or precedent or whatever that a party only gets one 30(b)(6) deposition of the other side. It all has to be done at once. I'll just tell you that that's completely inconsistent with my experience in complex litigation. But if there's something that says that somewhere, I'd appreciate somebody on the defense side telling me what it is.

MS. MILLER: Your Honor, Britt Miller for Georgetown. I think the defendants' position was simply that in order to be able to meaningfully schedule these, including the possibility of individual 30(b)(1)s being overlapped with 30(b)(6)s, that the identification of the 30(b)(6) topics are told to us up front so that we can appropriately prepare a witness or witnesses and ensure that our witnesses are not taken in duplicative order; i.e., a 30(b)(6) follows six

months after we've done most of the depositions or vice versa is an interest of efficiencies and to ensure that our clients are not unduly burdened.

THE COURT: Okay. I mean, kind of imbedded within your answer is it was probably an unintentional concession that 30(b)(6)s aren't limited to one because you said witness or witnesses. That's the norm, actually, in complex litigation is it takes more than one witness. And so by definition it's not one deposition.

So here's the deal. I'm going to limit it to -- I'm going to limit it to two per defendant. And I'm just going to say that's a number I am pulling out of the air. Okay? So if somebody wants to call that arbitrary, you're right. It is. So that's the adjudication of that dispute.

The next one I want to talk about is the subpoenas to the parents. A couple of questions.

So let me just say by way of preface, it seems to me the question is whether there's anything that's relevant and not disproportionate. And if that's -- if the answer to those questions is yes, I'm really not inclined to require the defendants to go through the plaintiffs' lawyers on this.

So the categories are -- there's five of them, as I understand it. Number one would be financial aid applications and underlying materials.

Number two would be records regarding other forms

of -- other forms of financial aid.

Three would be documents regarding the payment of tuition and expenses.

Four would be college applications and communications about them.

And five would be documents regarding, quote/unquote, this litigation.

So I will tell you there's a lot of ink spilled I think in both sides' submission over this whole question about who's a direct purchaser and what's downstream and all that. I am -- that strikes me as an issue that's going to have to be decided on the merits. I am strongly, strongly disinclined to do that now in the context of deciding a discovery motion. So I'm inclined to bypass it.

So I'm going to start with request No. 5 because that's an easy one. That's the one about documents regarding the litigation. And that's a paraphrase, but I see that in the defendants' submission, which kind of gives the categories.

It's too vague and overbroad. I'm not allowing that one.

Now we're going back to number one, financial aid applications to the defendant universities. Are we talking about the FAFSA form? Is that what we're talking about? I mean, it's been a while since I was in the business of helping

kids apply to universities, but, I mean, in the old days, at least, you submitted a FAFSA form. And some schools had an additional form that they needed you to submit. So when you're asking about financial aid applications, can you just tell me, on the defense side, physically what it is you're talking about.

MR. SUGGS: Your Honor, this is David Suggs for Vanderbilt. We're talking about whatever form the plaintiff submitted, as you said. There may be --

THE COURT: That's not what I'm asking you. Okay. So you speak for Vanderbilt. What is it at Vanderbilt? What do they -- what do people submit?

MR. SUGGS: Nowadays, your Honor, it comes through the college board, and there's a form. So it's filtered through the third party, and Vanderbilt just kind of gets the data, not the form directly.

THE COURT: And at the time of the lawsuit, which probably isn't right now, but let's say five years ago or whatever, was that the case or was it done differently at that point?

MR. SUGGS: I don't know when that became the case. The plaintiffs are asking for data going back to the '90s. So there have been changes, but I don't know exactly when the changes occurred. And we're also asking for other information including the underlying --

THE COURT: Look, look, look. I got an hour and 15 minutes to give you guys, 15 minutes which we've already used. And we've got about 20 minutes to cover, so I'm really just going to ask that people just answer the questions I'm asking. You're now going beyond the question I'm asking.

So the short answer is you don't know. My question is -- can somebody else answer this question? What is it we're talking about when you're asking for financial aid applications?

MR. RUBIN: Your Honor, this is Michael Rubin for University of Chicago. When the parents submit the FAFSA, they get a return copy of it. So that's one form of it. Then there's the application to the college board called the CSS Profile. That's another piece of it.

THE COURT: Got it.

MR. RUBIN: And then some schools have their own individual one. Chicago has their own private shorter one.

THE COURT: That's helpful.

Here's my question. Do the schools, the defendants in this case, in other words, don't you already have this from these applicants? Whatever they sent in, don't you already have it?

MR. SUGGS: Your Honor, we have it for the defendants, but we don't have it for other schools to which the plaintiffs applied. And if any of those schools used

customized forms, then we wouldn't have those, even if we have the FAFSA or CSS Profile. And, again, we don't have the underlying documents.

THE COURT: I thought that this request was for financial aid applications to the defendant universities. Does it go -- did I misread it? Does it go beyond that?

MR. SUGGS: Your Honor, it does go beyond. It asks for all documents about the plaintiffs' applications for financial aid, any decision concerning the application, documents used in connection with the application.

THE COURT: Okay. I'm just trying to get a handle on it.

Okay. So here's the ruling. Okay? I am not, repeat not, allowing subpoenas for the -- what you refer to as the underlying materials; in other words, I gather the materials that would -- that were used to prepare the forms. I think that is largely, if not entirely, a fishing expedition regarding whether financial aid applications were truthful or not. There's no showing that that's likely to be a relevant issue in this case.

Even if so, even if it were, it's extremely tangential and it's not fair, reasonable, or proportionate for a non-party to a lawsuit. So you can subpoena the parents for the materials that were actually submitted to universities, but that's it. That's request one.

Request two, this is the one for other forms of financial aid. Give me one second here. I just got to decipher my notes. So on some of these, as I said, I'm just going to rule.

The defendants argue that this is important in order to compare financial aid offers and that it might show the non-existence of collusion or the absence of impact of collusion. I think that has some potential relevance. I think the same thing about records regarding financial aid offers from other sources. I'm not buying into the no injury argument that the defendants make. It's really super thin on authority. But, nevertheless, I think this information could have some relevance, so that one is okay.

Category No. 3 concerns documents regarding tuition and other payments. I'm really not understanding the relevance of this, and the defendants really don't make much of an effort in this submission to explain it, so that one is a no.

And then the last one is communications regarding attending -- reasons for attending a particular school or discussing the pros and cons or the merits -- relative merits of schools.

So the only thing that comes close to hitting the relevance mark on this -- and by close, I don't mean close -- is that this has a bearing on the relevant market. I just

have to say I think the opinions of parents and the students are unlikely to even be relevant on that. Or if they're relevant, the probative value of it is quite minimal. You can certainly ask people what schools they applied to and why, how they compared them. But basically what you're asking for is for people to go back in all likelihood into their emails, going back eight or ten years in some cases, maybe even more. And I just think it's beyond disproportionate.

So the bottom line is the defendants can subpoena the plaintiffs' parents for their applications -- their -- excuse me -- the financial aid applications to other schools -- I do think it's more likely that a parent would have kept that than a kid -- their financial aid offers from other schools or from third parties, and that's basically it.

Okay. That's the ruling on that one.

MR. NORMAND: Your Honor, Ted Normand for the plaintiffs. I apologize if I missed this. You made an opening reference to the extent which defendants would be interacting with the parents.

THE COURT: They can subpoena them. They don't have to go through you.

MR. NORMAND: For purposes of the subpoena, understood, your Honor.

THE COURT: Well, I mean, that's all I'm being asked to decide.

Okay. Next item. Okay. So I'm actually going to skip ahead just in sequence. This is the defendants' motion to compel. This is the one that basically has the list of various interrogatories and requests for production.

There may be one or two I have questions on, but I don't think so. So I'm just going to go through. I'm just going to tell you, it is not likely that I am going to go back and issue a written ruling on all of this stuff. It's just going to say granted in part, denied in part, as stated on the record. So just either take really great notes or order the transcript.

Excuse me one second.

Okay. Starting with interrogatories 1 and 2, that's parallel with something I just talked about. That has to do with applications for admission and financial aid in documents regarding other sources of financial aid that was actually received. Those are enforced for the reasons that I just discussed on the parents' subpoena.

Interrogatory number 3 asks for analysis of the relevant market. I think that's premature at this point. It's a contention interrogatory. And contention interrogatories don't always have to wait until closer to the end of discovery, but I think that's appropriate here because everybody who is on this call understands that this is almost entirely going to come from experts. And it's way too early

to make people take a position on that, so I'm not enforcing interrogatory 3.

The rest are requests for production, I'm basically organizing this. It's not exactly in sequence, but it's in the sequence they're discussed I think.

So the first one is request for production of 1 and 7, documents regarding the reasons the plaintiff applied and comparing schools. That one -- I think that's relevant, and so I'm enforcing that one.

Documents regarding the relevant market, that's not. I'm not enforcing that for the reasons I just discussed. I think one of those is 117. I forget which is which.

Request for production 2, applications for admission to the defendant universities. Okay. This one is actually just asking for applications for admission to the defendant universities. I'm trying to figure out why you need to have the plaintiffs produce that. Don't you already have them?

MR. SUGGS: Your Honor, in some cases, as we're learning in responding to plaintiffs' discovery request, we do not always have the documents.

THE COURT: Really? They don't keep them?

MR. SUGGS: Sometimes -- sometimes due to standard document retention policies, the materials are not retained.

THE COURT: Okay. Fine. You told me what I need to know. That one is enforced. I think it's relevant.

Request for production 3, applications for financial aid, that's essentially parallel to the thing I dealt with on the parents' subpoena. That's enforced, but just the applications, not the underlying or supporting documents.

Request for production No. 5, this has to do with third-party scholarships and financial aid from third parties. Again, I'm not taking a position on this direct purchaser or downstream issue that's addressed in the briefs. I'm enforcing this one because I think it could lead to relevant evidence. I'm not positive of that, but close enough.

Request for production 6, this has to be -- this has to do with documents regarding getting turned down for financial aid -- no, excuse me -- documents regarding turning down financial aid offers. That's the way I read it. I'm not enforcing that one. It's not relevant as it's described. Anything relevant is otherwise requested and is going to be produced, as I understand it, namely, financial aid offers from other institutions. So to the extent that that's within the scope of 6, that's enforced. Otherwise, it isn't.

Request 11 is the next one. My shorthand is documents regarding the circumstances under which the plaintiffs got involved in litigation. I think this is overwhelmingly likely to involve work product or attorney client privilege. It's pretty tangential at best to any relevant issue. It's certainly okay to ask about this at

depositions, but I'm not going to at this point require production of documents. You can come back to me on that if something pops out during a deposition that you think you need to see.

MR. SUGGS: Your Honor, if I could just -- if I may ask a question?

THE COURT: No, you can ask when I'm done.

Request for production 12, this is documents regarding fee arrangements and engagement letters. My understanding is that plaintiffs undertook to produce engagement letters. Did that get done? It was supposed to happen I think on January the 30th. Did that get done?

MR. SUGGS: No, your Honor, we have not received anything from plaintiffs.

THE COURT: You have to produce the engagement letters. But otherwise -- but that's it on that one.

Request 18 and 26 are discussed together. These are records regarding loans and modifications and payment histories. I'm not seeing the relevance of that. So basically for the reasons that are discussed in the plaintiffs' memorandum, so I'm not enforcing that one.

Request 19, documents regarding satisfaction with the institution and the value of the education, it's just the way it's written, it's overly broad and unduly burdensome given the breadth of it, so I'm not enforcing that one.

19 and 21, these are social media user names and documents regarding social media. That's a hard no. It's a fishing expedition, and it's inappropriately intrusive, in my opinion.

Request for production 24, documents -- oh, I'm sorry. The documents that the plaintiffs say they've agreed to produce on that, this is page 15 of their response, seems sufficient to me on that one, so I'm not enforcing it beyond that.

The last one is loan agreements, and for the reason I said on request 18 and 26, I don't think that's relevant. I'm not enforcing that. So I'm done with this motion.

What was your question?

MR. SUGGS: Your Honor, with respect to request 11 --

THE COURT: As I said at the beginning, every time you talk, say your name so the court reporter doesn't have to go running her cursor across the screen while she's trying to type.

MR. SUGGS: I apologize, your Honor. David Suggs for Vanderbilt University.

This was the request for documents about how the plaintiffs became involved in the litigation. You stated that you think --

THE COURT: Number 11?

MR. SUGGS: Yes, sir. You stated that you think the

documents are privileged. All we ask is that --

THE COURT: That's not what I said. That is actually not what I said. I said -- I'll quote you what I said. Give me a second.

What I said was, I think it's overwhelmingly likely to involve work product or attorney-client privilege, and it's pretty tangential at best to any relevant issue.

That is what I said.

MR. SUGGS: Okay, your Honor. Well, our position is that when they became involved in the litigation --

THE COURT: Fine. Look, you filed two briefs on this. I considered your position. I considered your position. I'm not holding oral argument on this. You filed two briefs. That was one more than the plaintiffs filed. I ruled on it.

All right. So we're going to go on to the next thing. That is -- hang on a second. Pardon me. The next one is the motion by Brown, Columbia, Dartmouth, Northwestern, Notre Dame, and Yale for a protective order.

So now we're getting into kind of more heavy questions I think here.

So I want to start off asking the plaintiff a couple of things here, plaintiffs, a couple of things here. So can you give me -- and it's been done in other places, and maybe to some extent in briefing on this. But can you give me kind

of a nutshell explanation for how the contention that admissions, at least some admissions, are tied to donations bears on your antitrust claim.

MR. GILBERT: This is Robert Gilbert, your Honor. That's a fairly broad question, as I understand it.

THE COURT: Basically what I'm asking you to do is explain the relevance of the information about donations and trying to link that to admissions.

MR. GILBERT: The culpability of -- as your Honor has ruled on August 15th, the culpability --

THE COURT: Stop. Stop. I know what I ruled. I'm just -- I have a reason for doing this, so let's just answer my question without giving me the entire history of time.

MR. GILBERT: Okay. It's relevant because the admissions that were wrongdoing at Dartmouth, for example, are evidence of the liability of Georgetown and every other defendant.

THE COURT: You're missing my question. Let's say -- I'm just talking about on an individual basis. Let's just stick with Dartmouth. Okay? So how does -- let's say just hypothetically that Dartmouth had a practice of giving enhanced consideration or automatic admission to high-level donor's kids. Okay? How would that bear on your proof of Dartmouth's liability for the antitrust conspiracy? Put all the 568 issues to the side for now.

MR. GILBERT: Okay. It would show that as to just Dartmouth that Dartmouth was not entitled to an exemption and that it's a pure price fixing collusion case. But it would also show that every other defendant is liable on the same basis.

THE COURT: I get the every other thing. You don't need to keep going into it. So the reason it would show that that particular school was not entitled to an exemption is what exactly? I'm not arguing with you. I'm just asking you to explain it.

MR. GILBERT: If I understood your question, your Honor, the question is -- I'm sorry. I'm going to have to ask you to repeat it.

THE COURT: What does it show? In other words, if a school is tying some admissions to high-level donations, why does that help show that that school is not entitled to a 568 exemption? Because --

MR. GILBERT: Okay. Now I understand the question. I think I understand the question better, your Honor. I apologize.

THE COURT: I just answered it. It was my answer, right, because they're not need-blind, right?

MR. GILBERT: They're not need-blind. And "need-blind" means all applicants are admitted, all admittees are admitted without regard to the financial circumstances of

the student or the student's family. That's for the whole conspiracy.

THE COURT: Pause. I got my answer. I pretty much had to give it myself, but that's okay.

Now I'm going to go onto my next hypothetical question. Let's say that every defendant in the case dropped the 568 defense, every defendant drops the 568 defense. Would the donations tied to admissions, quote/unquote, evidence still be relevant, and, if so, why?

MR. GILBERT: This is an interesting hypothetical, your Honor. If every defendant dropped it and they admitted that they had violated the exemption --

THE COURT: I'm a law professor. Okay? Let's just pretend. You don't get to change the law professor's hypothetical.

MR. GILBERT: If they dropped it, then we'd have -- every single one dropped it, we'd have a pure price fixing standard collusion case in which they've already admitted they have a formula.

THE COURT: You probably wouldn't need it in that situation, right? "It" being the donations tied to information, tied to admission.

MR. GILBERT: My initial response to that hypothetical is we would not need it if every single defendant dropped the defense and then this was a pure price fixing

formula case.

THE COURT: They haven't. They haven't dropped the defense. It's just these six. And how many defendants total do you have in the case?

MR. GILBERT: 17.

THE COURT: There's another 11 or so that haven't dropped it yet.

Okay. Thanks.

So my next question is, and this is a more particularized question, as it does relate to the motion. It's not a hypothetical. So part of the thrust of this motion is that, hey, wait a second, we -- we dropped the defense. We don't agree with the argument that if one did it, everybody gets hooked in, but put that to the side. You got 11 other schools you can get this stuff from. You don't really need to get it from us too, and we ought to get something out of having dropping this defense. It's kind of like a proportionality argument.

And that's probably putting it more directly than it's put in the motion, but I guess I'd like to get the plaintiffs' take on that. Basically, it's an argument by these six schools, hey, we did something here. We dropped the defense. We should give some credit for that. You can get this information from other schools. You don't really need it from us too because --

MR. GILBERT: Your Honor, let me respond in three levels. The first is to slightly amend what I said before. They're still asserting a statute of limitations defense. Okay? If the 17 are still asserting a statute of limitations defense, that means there was -- they say we should have known to file a complaint earlier, which means we should have known that there was wrongdoing that they were concealing. So we're still entitled to find out what they were doing and how they were hiding it. So even if they -- all 17 dropped the --

THE COURT: Okay.

MR. GILBERT: That's the first point.

The second point is, as to the other schools, we have substantial basis to believe that these six schools are the most culpable. I'll just give you three examples, your Honor. And it would be the most efficient to just establish this, that the conspiracy was not need-blind.

The first is that Brown has sent a letter that was produced on -- let's see -- I guess it was December 16th. And the letter admits that they were need aware as to transfer students and admits that the other conspirators, all of them, were need aware as to wait list students. So getting -- Brown is the best place to go. Okay? And they're one of the people that filed the motion.

The second example, Yale, months after the filing of the complaint, was the subject of an exposé in which Russian

oligarch billionaires were making substantial donations to Yale in exchange for their kids getting admitted to Yale. Okay? That's another reason why it would be very efficient to go to these rather than see what we could find at the other 11.

A third example would be Northwestern. Actually, I want to do four, if you don't mind. Northwestern, there was a student newspaper article that the president had reviewed and spoken to the admissions office about 550 applications in one year, most of which related to donors. Okay? It would be much more efficient to just have discovery about that than to chase around 11 other defendants.

The final example I say is Dartmouth. Dartmouth had a senior official whose last name was Sassorossi, whose job for years was to coordinate fundraising and admissions. So the most efficient way for us to establish the liability of the conspiracy and the violation that we have a strong statute of limitations argument, because they were hiding what they were doing, okay, is to go to these defendants, your Honor.

THE COURT: Let me push back in this way. First with a question. Understood on these six defendants. Are you asking from the six the same information or what?

MR. GILBERT: We're asking for the information about their violation of need-blind.

THE COURT: Okay. I'm being very specific in what

I'm asking -- let me be very clear on what I'm asking. When I say "this information," what I mean is information that would assist you in determining whether admissions were tied to donations. Are you asking for that from the other 11?

MR. GILBERT: Yes. And as to your question about getting something -- I want to do it in response to your question about getting something.

THE COURT: No, no, no. Hang on. What you told me a second ago was that it's most efficient to go to these six. I get that. They're the major malefactors of what you're contending, in other words, but you're also going to the other 11. So it's kind of hard to swallow it's the most efficient argument if you're doing it from everybody.

MR. GILBERT: Well, your Honor, we had actually addressed what you said as sort of a proportionality. We had made a compromise offer that we want to take the depositions of six specific people. We're authorized to take ten depositions at every defendant. Okay? And we said, no, we just want six specific individuals for depositions on this issue.

THE COURT: You're deciding them by title or by function, I'm assuming?

MR. GILBERT: Mr. Sassorossi, his job was to --

THE COURT: You don't need to give me the details.

MR. GILBERT: But you understand the point, I'm sure,

your Honor.

THE COURT: Okay. Who is going to address this on the defense side?

MR. LITVACK: Your Honor, Doug Litvack for Dartmouth.

THE COURT: You're just going to need to keep your voice up because since you're so far away from the mic, it sounds like you're talking from the bottom of a barrel.

MR. LITVACK: Sure. I'll keep my voice up. I apologize for that.

THE COURT: By the way, that is great art in the background. You win the background contest for today.

MR. LITVACK: I'll be sure to let the firm know that, your Honor.

Your Honor, to Mr. Gilbert's point, I just want to address a few things that Mr. Gilbert said. First, Mr. Gilbert is conflating the exemption with liability. Those are two distinct issues in this case. There's antitrust liability, which he conceded has nothing to do with admission practices. And then there's the narrow question of the exemption.

And, your Honor, you spent a good amount of time in the motion to dismiss order interpreting the exemption and giving us guidance on what the exemption means. And it's a binary question. It's a very simple binary question of whether schools' need admissions process consider an

applicant's financial circumstances in making an admissions decision.

And the scope of discovery the plaintiff seeks is completely, grossly disproportionate to the needs of the case. They're seeking here, your Honor, 73 RFPs, and we put in our declarations what that would entail in terms of work. Those documents seek 25 years of information, hundreds of thousands of documents --

THE COURT: Time -- time out. Time out.

MR. LITVACK: -- that's millions of dollars of additional expense --

THE COURT: This motion doesn't talk about all 73. So let's just talk about what this motion talks about.

MR. LITVACK: Your Honor, respectfully, it does talk about all 73. Yes.

THE COURT: All 73, every one of the 73 is covered by this motion?

MR. LITVACK: Correct, your Honor. Let me just explain what we're asking for here. Your Honor, we're asking for here a protective order from the discovery -- the grossly disproportionate discovery the plaintiff seeks. We're not saying that no discovery from us on these issues is appropriate. However, the discovery that the plaintiffs are currently seeking is completely disproportionate, and Mr. Gilbert's compromise that he discussed, he didn't tell --

he failed to tell that they're seeking production of 37 of the 73 RFPs, doesn't meaningfully reduce the burden. We didn't have any issue with the depositions. We had an issue with spending millions of dollars and significant time and effort for a defense that we're not asserting. And, frankly, there's easier, more targeted ways to get the information that the plaintiffs need for this narrow question.

THE COURT: Okay. So time out here. I'm just looking at the request for production. So I understood this motion as basically saying, don't make us, the six movants, produce information about donations to the school and linkage of that with admissions. Did I misread the motion?

MR. LITVACK: You did, your Honor.

THE COURT: Okay. It wouldn't be the first time I've done that.

MR. LITVACK: It's also about admissions practices as well, your Honor. Admission practices are equally as relevant to plaintiffs' antitrust claim, as Mr. Gilbert explained.

THE COURT: Okay. Give me just a second here. I just want to pull up something.

Bear with me.

So I guess maybe my problem is that nothing in your memorandum tells me what the limitations are that you're looking at. And the bulk of the discussion is under -- what I see as the discussion is under heading II, Roman numeral II,

which says: "Discovery into admissions and development activities of the moving defendants is not relevant to the merits of the plaintiffs' claim or the statute of limitations defense."

And so I guess I read that, you know -- you will excuse me if I read it kind of consistently with the title, Admissions and Development Activities, as this motion was more or less targeted into the linkage between those two things. And there's really nothing in the memorandum, which I'll just point out is 15 pages that says, here's specifically what you want me to do.

So just from kind of a consumer standpoint, me being the consumer, that's a little problematic. So can you tell me in a nutshell what you want me to do?

MR. LITVACK: Yes, your Honor. We want you to issue a protective order that prohibits plaintiffs from enforcing compliance of the 73 RFPs that were attached to our motion as Exhibit C and -- so we're willing to entertain more targeted, lesser forms of discovery --

THE COURT: So your proposal is strike everything, and we start over. And we'll talk to you. That's what I got from what you just said. Did I get it right?

MR. LITVACK: No, no, no, your Honor. No, your Honor.

THE COURT: Okay. I don't want to paraphrase. Let

me read back to you what you said to me.

We want you to issue a protective order that prohibits plaintiffs from enforcing compliance of the 73 RFPs that were attached to our motion, and we're willing to entertain more targeted, lesser forms of discovery.

So what -- how would a person in my shoes understand that other than what I just said? Strike everything and start over, and we'll talk to you. That's what you told me.

MR. LITVACK: Sorry, your Honor. Sorry, I didn't mean to speak over you.

I didn't finish the part of what we're asking for was --

THE COURT: I didn't interrupt you. I didn't interrupt you.

MR. LITVACK: We're willing to submit, as our motion suggested, written interrogatories as well as produce documents sufficient to show whether our clients' admissions departments did or did not consider an applicant's financial circumstances in any way in making admissions decisions. We think those two things will give the plaintiffs the discovery they want related to the exemption and will be proportionate --

THE COURT: Stop. Stop. What you just said, what you said, where do I find that in the memorandum in support of the motion? I guess it's just -- it's a motion. It's kind of

a speaking motion. Just point to me where I find that in the motion because I guess I must have missed it. So tell me where it is. I've got it pulled up in front of me.

MR. LITVACK: Your Honor, you didn't miss it in the motion.

THE COURT: Because it's not in there. Because it's not in there. I mean, seriously, folks. You guys gave me like, you know, the book that I put together of all of this stuff, I'm just going to tell you how many pages it's got in it. 645 pages of all the stuff -- 645. That doesn't count the 40-page status report from back in January. I mean, what's the planet on which you don't put in your motion -- your 15-page motion for protective order exactly what you're asking me to do? It's not this one. It's not the planet Earth. Okay?

So basically when I asked you, point blank, tell me what you want me to do, you said, don't make us respond to the 73 RFPs. And we're willing to entertain more targeted, lesser forms of discovery. Translation, that's the only reasonable translation of what you told me is strike the 73 RFPs. And if you want to serve something else, we'll think about it. We're willing to entertain it. That's just not a viable alternative. And it's not in your motion. It's not in your motion.

Here's the deal. I'm about ten seconds here from

just striking the motion because it doesn't describe the relief you're asking for. So you get one more chance to tell me why I shouldn't do that.

MR. LITVACK: Your Honor, in the motion, we do request a protective order from all 73 RFPs. That's the relief that we're seeking, your Honor.

THE COURT: Again, I'm going to ask you where in the motion does it say that?

MS. VAN GELDER: Your Honor, this is Amy Van Gelder.

THE COURT: No, no. I am talking to a particular person here. I am sorry. I'm going to deal with the person who is talking to me here, who has taken up the last 12 minutes of my life that I'm never going to get back. Okay? So tell me where in the motion I find it. I'm not saying it's not in there. I just want you to tell me where I can find it so I can look at it in black and white.

MR. LITVACK: Your Honor, it's -- first of all, it's in the conclusion on page 15. And then we reference in the introduction of the motion.

THE COURT: The conclusion on 15 says: "For the foregoing reasons, the Court should grant this motion and enter the proposed protective order as to the moving defendant."

So it basically refers me to something else. That's not containing it within the confines of the motion. Where is

it in the motion?

MR. LITVACK: Your Honor, it's on page 3 on the last -- I'll just read it out loud, your Honor.

"Accordingly, the moving defendants seek a protective order precluding discovery from the moving defendants with respect to admissions and development activities including through requests for production and search terms identified in Exhibit C to Exhibit 1 of the motion."

It's in --

THE COURT: Time out. Again, when you file stuff with a judge, okay, and you guys -- I mean, it's kind of a foregone conclusion in any litigation that the judge is the person who knows the least about it. The parties know about it. The lawyers for the parties know about it. I know what you told me. Okay? So here's what you told me in the thing that you just read, which is the last sentence of the full paragraph on page 3:

A protective order precluding discovery from the moving defendants "with respect to their admissions and development activities," including through the requests for production and search terms identified in Exhibit C to Exhibit 1.

So, again, the last part of that refers me to something else, and when I read this about admissions and development activities, since the thrust of most of the actual

discussion had to do with contributions to the university, I read the "and" as meaning and, linkage, in other words. You didn't explain otherwise.

So now I'm actually going to go look at -- if I can find it -- Exhibit C to Exhibit 1. Exhibit C to Exhibit 1.

So Exhibit C to Exhibit 1 is a spreadsheet -- it's a 19-page spreadsheet. It gives a bunch of search terms in it. Honestly, again, that doesn't tell me -- okay. This has kind of been a waste of 20 -- we're now up to about 20 minutes. It's kind of been a waste of 20 minutes.

So, look, I'm not going to make the plaintiffs go back over from scratch. I'm just not. That's number one.

Number two, part of the reason why I'm not going to make the plaintiffs go back to scratch is that unless everybody withdraws the defense, which they have not, it's seven out of -- or 6 out of 17, which is something like 33 percent or something like that, maybe 35 percent. It's hornbook law of conspiracy, or at least the way this conspiracy is defined and the way the exemption works is that if other defendants -- and I already ruled on this in the motion to dismiss. To the extent that what I'm about to say varies from the motion to dismiss, I'm not intending that. Basically says that everybody within the alleged group has to have been complying with 568 in order for anybody to take advantage of it.

Okay. Now, you might openly convince me that that's not right. But as of right now, that's the operative complaint and what it says and at least part of the basis on which I sustained it. So the proposition that by some but not all defendants withdrawing the defense, you've essentially removed yourselves from the need to provide discovery on these points really is not accurate. It's not right. It's incorrect. And I'm not even thinking about the statute of limitations issue.

If I had gotten a more targeted motion here -- which I kind of thought I had, but I guess I didn't -- that says, you know, limit it in various ways, I would have considered it, but you haven't done that. And I don't think you've made the case on disproportionality. The information is relevant. The motion is denied.

Next.

MR. GILBERT: Your Honor, may I address one more issue regarding if the 17 withdrew the defense?

THE COURT: So wait a second. I just ruled in your favor on the motion.

MR. GILBERT: Right, right.

THE COURT: Are you going to try to talk me out of it?

MR. GILBERT: We're delighted by that, your Honor. But I would like --

THE COURT: What do I need to hear about it then?

MR. GILBERT: That's fine, your Honor.

THE COURT: No, I don't need to hear more about it.

So I think now we're over to the stuff in the status report. And let me check my time here. So we're down to basically about our last 10 or 12 minutes that I've got for this.

Okay. I'm looking at the January 13th status report. Bear with me. I'm pulling it up.

A question for the plaintiffs: On page 28 of the status report -- and it would be helpful if you could look at that -- there's a paragraph that says: "Plaintiffs also have less burdensome avenues of discovery available to determine whether an applicant's financial circumstances influenced the decision of an admissions officer. For example, some defendants have proposed that before adding these custodians, plaintiffs propound interrogatories relating to defendants' admissions policies or conduct a 30(b)(6) deposition of an individual in the admissions office to determine if donations are considered as part of admissions decisions."

So that kind of sounds like a good idea to me. What's wrong with it?

MR. GILBERT: Two things, your Honor. I might be mistaken, but I believe there's only a very small minority that have actually proposed that. But more fundamentally, the

records of interest are not in the admissions office. The records that show the tying of the donation and the admissions is where the deal was made, and the deal was made between the development office and the donor or by the president of the university and the donor. That's why Morton Schapiro of Northwestern looked at 550 applications and spoke to the admissions office about it. He could tell them orally, which is certainly strongly implied by the article of the Northwestern student newspaper that that's what he did. He told the admissions office orally what to do.

So the real records tying the donation to the deal are not in the admissions office.

THE COURT: Why wouldn't there be in that situation? I mean, wouldn't there be like a notation in the file or something like that, that the president of the university said, admit this person?

MR. GILBERT: There may be -- you're absolutely right, your Honor. There may very well be, "Schapiro said admit." Okay? We then miss all the why he said admit. Okay? What was the basis? How much money donated? And what was the negotiation of the donation?

THE COURT: Again, the proposal isn't that instead of adding these custodians. The proposal, as I read it, is before adding these custodians, "the custodians" being the ones in the development and the president's office.

MR. GILBERT: All right. Well --

THE COURT: I mean, in other words, let's say university X, somebody, you know, that qualifies as a 30(b)(6) deponent or, you know, by their title or by, you know, being educated about it or whatever comes in and says, it's never -- I guess -- apparently, if I'm reading this stuff right, MIT is going to say this. It's never happened in recorded history that we've been told by the development office or the president's office to give more weight to this person or admit this person or look at their application again or anything like that.

So, I mean, I -- that's the way I'm reading this is that before you tell them, okay, go look in the admission -- go look in the development and the president's office, let's at least find out if there's some basis to believe that those kind of communications coming from one of those two places or both of them are happening.

MR. GILBERT: As long as we're not excluding these custodians, I think that's going to, your Honor, very much extend the life of the discovery because we think we know exactly where to go. As we said, we think we have six names where we think we could prove this, take six depositions, and be done with it. To go through the admissions office --

THE COURT: You better watch out how many times you say that.

MR. GILBERT: Okay. In terms of efficiency, we think that's the most efficient way to go, rather than go to people who, at most, may have received a note --

THE COURT: What if I were to say, fine, rather than -- at least initially, rather than sending, you know, putting the development and the president's office and all 17 schools on the custodian list, if you've got these six people that you want to depose, you know, ask for their records.

MR. GILBERT: I believe we've asked for that, your Honor.

THE COURT: I understand. But, I mean, in other words, let's pause the rest of it.

MR. GILBERT: That would be -- that would be acceptable to us, your Honor, that if we had those six --

THE COURT: So thanks. You said "acceptable." I'll take a yes.

So let me turn over to the defense side here. So the proposal on the table is pause generally the inclusion of the president and development office among the custodians with the exemption of these six -- I forget which ones they are -- the six institutions that plaintiffs' counsel is talking about, Mr. Gilbert. So somebody from the six that wants to answer that.

MR. DUSSEAULT: Your Honor, do you want to hear from someone from the six? This is Chris Dusseault. I'm the one

addressing the issue more generally of the compromised proposal.

THE COURT: It probably makes sense for somebody from one of the six to answer that, I think, given what the suggestion is that I put on the table.

MR. ROELLKE: Your Honor, it's Jon Roellke for Brown University. I think that proposal kind of stands us on its head and that --

THE COURT: That's what I thought you were going to say is that should be -- since we withdrew a defense, we should have less stuff, not more, and now we're getting more.

MR. ROELLKE: Yeah, precisely, your Honor. And I think the proposition that the plaintiffs assert that they already have dispositive evidence that those six or the folks that they want to depose engaged in not need-blind practices proves too much. If they already have the evidence, I don't know why they need more. And certainly with respect --

THE COURT: Have you ever heard of testimony? I mean, as opposed to an article in a student newspaper? You get that, right? What you just said proves too much.

MR. ROELLKE: Your Honor, my point being that to -- and we aren't asking the plaintiffs to start from scratch on this. This relates solely to the issue of whether or not they're entitled to discovery of need-blind practices for purposes of the exemption. There's 140 document requests, 73

of which relate solely to the application of the exemption. And those are the requests that we are seeking to foreclose the plaintiffs --

THE COURT: I've ruled on that motion. We're talking about something else now. Seriously.

MR. ROELLKE: Well, it relates to the question of whether or not discovery of entity of schools that do not rely on the exemption is appropriate. And if what the proposal on the table is that discovery of the schools that have moved for a protective order should in the first instance be limited to a deposition and not preceded by the 73 different document requests that relate to the application --

THE COURT: Okay. So let me just give you a hypothetical which probably isn't all that hypothetical. Let's say we did that. And so Mr. Gilbert lays a subpoena on the president of Northwestern. I don't know if he's still a president or not. Let's just assume he is. Lays a subpoena on the president of Northwestern. Says, okay, what about it, Mr. So-and-So, or Dr. So-and-so? Did you say this? I don't remember.

What about -- did you ever, you know, put in a call or send any kind of communication to the admission office about, you know, an applicant whose family had given a lot of money? Well, I don't remember.

Did you do it with regard to -- and then he quotes

something from out of the student newspaper? I don't recall one way or another.

We all know stuff like that is going to happen. It might not be a hundred percent across the board. We're talking about -- just by definition, we're talking about stuff that happened 8, 10, 12, maybe more years ago. People aren't going to remember. You're talking about busy people who've got -- it's kind of like a judge or a lawyer. They've got 57 things they're doing. This is one of them. They're not going to remember details of that.

So, I mean, unless you were willing to say, okay, so if -- I tell Gilbert, okay, Gilbert, you got to go take these six depositions, just do it with what you've got right now. Unless you're willing to say, on the defense side, if we get any "I don't knows" out of those depositions, then I'm going to let them go back and get the documents and then make the person appear again to answer the questions they didn't remember the first time. Unless you're willing to say that, in other words, agree that the person could sit for a second deposition if they don't recall something significant, which I'm betting you won't do, that's my bet, then what are we talking about? Would you do that? Would you agree to that?

MR. ROELLKE: Your Honor, I understood the proposal to be that in order to --

THE COURT: No, no, no, don't respond to somebody

else's question. Respond to mine. Seriously. It's not one of those Sunday morning talk shows where, you know, George Stephanopoulos asks a question and then whoever is answering it just gives their talking points. That's not the way it works. It's a real question and answer. You have to actually answer the question. So it's my question. Just answer it.

MR. ROELLKE: And I don't understand how that would solve the proportionality problem that we're trying to address.

THE COURT: Here's how it would solve it, because you just said that, hey, if he's got these six smoking guns here, just take those depositions and be done with it. And don't make us cough up the documents. So my comeback was what happens if one of those people doesn't remember something that's significant? Would you be willing to make him sit for a second time and get the documents in between? That's the question I asked you, and you basically answered me with a non-answer twice. Let's try for three.

MR. ROELLKE: I just speak for Brown University, your Honor. To the extent that the plaintiffs want to take a deposition of Brown University --

THE COURT: We have somebody who is signed in from two devices in the same room. That's why we're getting the echo. So if you did that, please turn off the second device.

Thanks. Go ahead.

MR. ROELLKE: For Brown University, if the plaintiffs forego what we believe to be oppressive and burdensome document discovery in exchange for a deposition to address the issues that we think are disproportionate, we would -- and that witness did not provide sufficient facts to satisfy the plaintiffs as to particular questions, we would then be prepared to pursue the document discovery that, again -- if it was proportional -- and permit that witness to be deposed again as to those documents.

THE COURT: I think I counted five hedges in there. Who represents Northwestern?

Mr. Stein. Okay. Since the hypothetical concerned the president of Northwestern, what's your view about this? You're muted right now. I can't hear you. You're muted.

MR. STEIN: I'm sorry, your Honor. Can you hear me?

THE COURT: There you go. Yes.

MR. STEIN: Scott Stein. The lead for Northwestern.

Just to answer one question you articulated, Mr. Schapiro is now the former president of Northwestern.

THE COURT: I kind of thought that, yeah. Okay. Right.

MR. STEIN: But if I understand -- if I'm understanding correctly what your Honor is proposing -- we heard you on the protective order motion. Our concern, if there's going to be discovery on these issues, is to make it

proportional, right? And to the point that this is really a binary issue and the issue that the plaintiffs are focused on is, is there evidence that schools, Northwestern and other schools, considered the financial circumstances of certain students or families, then what your Honor is proposing seems a reasonable way to get at that.

In other words -- and Mr. Schapiro, by the way, President Schapiro, Former President Schapiro, was also the vice chair of the 568 group. He's going to be deposed. There's no question he's going to be deposed. And I have little doubt that in a deposition, the plaintiffs would be able to get the evidence that they'll argue is sufficient for them to make the arguments they want to make on the applicability of the 568 exemption. I hear you. If there's a lot of "I don't knows," of course, I can't say they have to be bound in advance.

But I think we would be able to make a strong showing after such a deposition that they have what they need, as they've articulated today. And we don't need to produce 20 years of donor records and admissions data. Let's do this quickly, efficiently. And I think that will be -- frankly, I think that will satisfy both sides' concerns.

MR. GILBERT: Your Honor, may I address that, please? This is Robert Gilbert.

THE COURT: Sure. Go ahead.

MR. GILBERT: The other point that has not been raised is the admissions decisions and whether it was wealth favoritism applies to whether the per se rule or the rule of reason or Brown doctrine applies. In the Brown case about the overlap group, the key issue was were the universities altruistic or were they revenue maximizing. If they engage in wealth favoritism, that would be another indication that they were not purely altruistic, which was the standard in the Brown case, but instead revenue maximizing. So that's another area of why this is important even if 17 conceded that the -- on the -- the exemption does not apply.

THE COURT: Okay. Folks, you've kind of reached the end of my available time for this. So I'm going to -- I guess what I'm going to do is kind of apply a hopefully somewhat sharpened meat ax approach. That would be m-e-a-t, a-x, approach. And I know that this isn't directly teed up with what we're talking about.

So right now, if I'm counting right, between the first and second document requests that the plaintiffs served, there's 179 requests for production, 173 plus 6. Is there a third or fourth, or is that the universe right now? Just yes or no? Somebody say yes or no on the plaintiffs' side or on the defense side.

MR. GILBERT: There is a third.

THE COURT: How many are in the third? Just ballpark

it. 10, 20, 30, 40, 150?

MR. STEIN: I think it's much closer to 20.

MR. GILBERT: 13.

THE COURT: Okay. So that takes us up to 192.

So here's what I'm doing. Did I put -- was there any kind of -- in the earlier orders, did I say you get this many interrogatories and this many RFPs?

MR. STEIN: Yes.

THE COURT: What was the number?

MR. STEIN: 45 interrogatories. I don't believe there was a limit on number of RFPs.

THE COURT: There is now. So you get to pick your best 100. You get to pick your best 100.

And as far as adding the development and president's office as custodians, I'm putting the pause on that for now. For now. We're going to readdress that in a couple of months once stuff is actually getting produced. I have to get this thing off the dime. So we're going to put the pause on having custodians from the development and the president's office right now.

Here's what that means for the defendants. I want to make it real clear what that means for the defendants. Okay? What that means is if I later determine that there's a basis to include those for some or all of the defendants, you're not going to get a whole lot of time to produce the stuff, and

you're not going to get to do it at anybody's leisure. It's going to be my definition of how quick you get it done. So that's the condition.

I don't have any more time to give you folks today. I got to start in three minutes an argument about patents and computer processors, which is going to make this look like a discussion of an action movie by comparison.

MR. MORSCH: Your Honor, James Morsch, on behalf of Duke. I just want to give your Honor advance notice of something that wasn't on the agenda today. The defendants filed an extension -- for an extension of the structured data deadline that was filed as item 313.

THE COURT: That got filed yesterday. That just got filed yesterday. I saw something got filed.

MR. MORSCH: Yes, that's a little bit time sensitive.

THE COURT: Hang on. Stop, stop, stop, stop, stop, stop, stop. I'm just pulling it up. It will just take a second for it to come up here.

Here it is. You're asking to extend the structured data deadline to March the 13th.

MR. MORSCH: That's right.

THE COURT: Do the plaintiffs have a problem with it?

MR. GILBERT: Yes, your Honor. We're going to file a brief --

THE COURT: No, you're not. No, no, no.

MR. GILBERT: We'll file an opposition in two days.

THE COURT: No. You're going to tell me right now what the problem with it is.

MR. GILBERT: The problem is, number one, it's not accurate. It misrepresents what was represented to the defendants.

Second is its meritless; that is, the anonymization could have started on November 22nd. The first we even heard there was a problem was on February 3rd. The first time it was explained was two days ago. Our experts have said this can be done much faster. Essentially, they've presented a fait accompli to the Court, basically telling the Court, this is the way it's going to be. They're violating two deadlines, not one. It requires them to violate also the deadline on March 3rd, which is court ordered. Okay? Which they don't mention --

THE COURT: What's that deadline? What's on March 3rd?

MR. GILBERT: That is for the substantial response to all RFPs, many of which are structured data. So now there's two deadlines they're blowing.

And we're prejudiced. In order to get the number of depositions done in this case, we had indeed -- indeed hired additional people -- to start the depositions in mid April so we could get done by the beginning of next year, which is,

again, the court deadline. And our ability to start the depositions in mid April has been prejudiced.

So for all of those reasons, we oppose the motion. And they have not even said there's going to be a rolling production is another thing. We were told there would be a rolling motion. All they said is in the motion was there was going to be data in a month.

THE COURT: Stop on that. Stop on that.

And, Mr. Morsch, you brought this up, so I'm hereby appointing you the spokesperson. So if I give you an extension, is it going to be -- pardon me one second here -- is it going to be a dump on that date, or is it going to be rolling production between now and then?

MR. MORSCH: It's going to be a rolling production, as we stated in the motion itself.

THE COURT: You get three weeks, not four. It's extended to the 6th of March.

MR. MORSCH: Thank you, your Honor.

One other thing. Item 2, which you talked about, the depositions, there was a little bit of a stun silence you may have seen when you raised that issue. You issued an order on February 12th.

THE COURT: Okay. Good, then. Never mind.

MR. MORSCH: Did you mean to revisit that order?

THE COURT: I didn't.

MR. MORSCH: Okay. Thank you, your Honor.

THE COURT: If I already ruled on it -- hey, I got a lot of stunned silences during this thing, so I can't really read much into it, other than the sound doesn't work that well. So it's not my intention to revisit the order. I just thought that was still on the table.

I got to end this, folks, because, as you can see, I'm having a hard time even talking.

MR. GILBERT: Your Honor, I apologize. But there's two reasons I need to address from the hearing commission.

THE COURT: I got to this end this now. I got to this end this now. The hearing is concluded. File something else. I don't want to have to go through the 469 pages again or whatever it was. The hearing is concluded.

Thanks. Bye.

(Which were all the proceedings had in the above-entitled cause on the day and date aforesaid.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Carolyn R. Cox, CSR, RPR, F/CRR February 9, 2023
Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division